

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

EDWARD PARTEE, JR., )  
                        )  
Plaintiff,           )  
                        )  
vs.                   )                      Case No. 4:17-CV-2827 AGF  
                        )  
ELDERCARE MANAGEMENT )  
SERVICES,            )  
                        )  
Defendant.           )

**MEMORANDUM AND ORDER**

This matter is before the Court on the motions of *pro se* Plaintiff for entry of Clerk's default and for default judgment against the sole Defendant in this case, Eldercare Management Services. ECF Nos. 47, 48.

On June 25, 2018, the Court granted Plaintiff's motion to amend his complaint and his second amended complaint was docketed that day. In the same Order, the Court denied Defendant's pending motion to dismiss as moot but allowed Defendant to refile the motion against the new complaint within 14 days. Defendant filed the new motion to dismiss 14 days later on July 9, 2018. Plaintiff filed a response in opposition to the motion to dismiss on July 16, 2018. Plaintiff chose not file a reply in support of its motion to dismiss, and the time for doing so has passed. The motion to dismiss is fully briefed and under the Court's advisement.

Plaintiff now argues that default judgment is appropriate against Defendant because Defendant has failed to answer Plaintiff's second amended complaint in a timely

manner. According to Plaintiff, Federal Rule of Civil Procedure 15(3) requires an answer or other responsive pleading to the amended pleading by July 23, 2018, and none has been filed. This is not correct. The Defendant filed a motion to dismiss based on Federal Rule of Civil Procedure 12(b)(6), within the time frame allowed by the Court. Under Federal Rule of Civil Procedure 12(a)(4), serving a motion under Rule 12 alters the time to serve an answer. Defendant's answer is due within fourteen days after notice from the Court of a denial of the motion to dismiss or a postponement of its disposition until trial. Fed. R. Civ. P. 12(a)(4)(A). Because the motion to dismiss is still before the Court, Defendant's answer is not late and default judgment is not appropriate in this case.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's motions for entry of clerk's default and for default judgment are **DENIED**. ECF Nos. 47, 48.

*Audrey G. Fleissig*  
AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE

Dated this 25th day of September, 2018.